**Statement of Ed Maltby, Executive Director of the Northeast Organic Dairy Producers Alliance**

**U.S. House Agriculture Committee**

**Hearing: A 2022 Review of the Farm Bill: Dairy Provisions**

**June 22, 2022**

**Chairman Scott and Committee Members,**

The Northeast Organic Dairy Producers Alliance (NODPA), founded in 2001, is the largest grassroots organization of organic dairy producers in the United States. It has remained true to its original goals of advocating on behalf of producers for a sustainable pay price, regardless of who they sell their milk to, and to protect the integrity of the USDA Organic Regulations. To learn more, visit [www.nodpa.com](http://www.nodpa.com/).

I was a dairy farmer for thirty years and have been farming both livestock and produce since I stopped dairy farming in 2000. I have been Executive Director of NODPA since 2005; served on the USDA Dairy Industry Advisory Committee in 2010; and serve on the Executive Committees of the National Organic Coalition and the Organic Farmers Association.

Organic certification is the only third-party audited program in the US and, as a federal program, is subject to a variety of federal policies, regulations and programs, along with the enforcement of the organic standard by the USDA’s National Organic Program (NOP). NODPA has worked with the NOP and all stakeholders to develop and implement regulations developed from the National Organic Standards Board (NOSB) recommendations that improve the integrity of the organic seal; ensure a living wage for organic farm families and their employees and ensure consistent implementation of regulations across all regions and certifiers.

**State of the Organic Dairy Market**

Since 2002, the retail organic dairy market has grown to 6.5% of the total domestic retail sales of milk products in 2021. It experienced growth of 7-15% per year in most years from 2005-2015, with the exception of the 2008-2009 recession. Its retail price per half gallon has been consistent, fluctuating between an average of $3.80 and $4.20 since 2008, according to data from the USDA AMS. Initially, the retail market was dominated by Horizon Organic, with CROPP Cooperative’s Organic Valley brand in the top ten for retail sales. In the last few years, store brand or private label milk has dominated in sales, with Horizon in second place and Organic Valley branded product lower on the list of retail sales. The store brands are supplied by the large, vertically integrated companies in the west and southwest, and by CROPP Cooperative, which sources its raw milk from a variety of different sized farms.

The price paid to organic dairy farmers in the northeast had slowly increased with the growth in demand since 2001 when NODPA objected to a cut in pay price by Horizon Organic from $20 per hundred pounds to $19. Pay price peaked in 2015, at $38 per hundred pounds, with demand exceeding supply. Cost of organic dairy production in the northeast in 2015 was determined to be $35 per hundred pounds by an ongoing study conducted by the University of Vermont. USDA NASS’s organic census showed that an increase in the number of organic dairy cows from 2014 to 2015 was 1,068, while the increase in organic cows from 2015 to 2016 was 38,326. Many of the large vertically integrated organic herds catering to the store brand companies used a loophole in organic regulation (Origin of Livestock) to dramatically increase their cow numbers, and by 2016 there was a surplus. This coincided with a slowdown in demand for organic dairy products, lax and inconsistent enforcement of organic regulation, increased consolidation in organic dairy and an increase in demand for plant based ‘milks.’ By 2018, the Northeast pay price had dropped by up to 25% and has not recovered.

The pay price average for 2022 is projected to be $31 per hundred pounds. After 5 years of a pay price below their costs of production, small to mid-size organic dairy farm families are leaving the industry, with the data showing that only those larger herds of 300+ cows have the ability to survive at the current low pay price. There were two bright spots in the past couple of years; one being that the increase in sales during COVID did reduce the surplus; and CROPP Cooperative gave a 50 cents per hundred pounds (6 cents a gallon) increase in pay price in 2022.

How is pay price determined? The organic pay price is determined by the two national buyers, vertically integrated large organic dairies, and the conventional price for balancing organic milk when there is oversupply. The national buyers are CROPP Cooperative and Danone NA, and the major independent supplier is Aurora Dairy. The two major buyers, with their own dedicated pool of milk, dominate the supply-side; buying organic raw milk at a price they set because monopsony is prevalent in organic dairy. Each buyer has regional pricing depending on geographic location. They also have quality incentives and penalties that are similar but not identical. In many cases, a farmer’s decision as to whom they sell their milk is determined by the pick-up route or processing plant that is nearest to their farm. Historical data shows that when there is a surplus of organic milk, the pay price drops across the board. It is only when supply is short or there is a new entrant into the supply market that pay price will increase, but not because farm operational costs increase or there is greater demand on the world market. Milk buyers must bear the increased costs of balancing supply with demand, and this affects the pay price in both the conventional and organic market because any surplus has to be sold at a lower price. Pay price is now determined by the price that CROPP sets to compete in the store brand market since approximately 70% of its raw milk supply is sold into the store brand or private label market. The price that CROPP pays sets the price for what all organic producers are paid, although recently Danone, owners of Horizon Organic, has cut its pay price below CROPP’s.

We are talking about more than just organic dairying. We all know the multiplier effect of small to mid-size operations that are the backbone of the rural community. In a letter to the USDA Secretary in September 2021, 7 United States Senators and 6 Members of Congress used the phrase “The organic dairy industry is an important economic engine in the Northeast and these farms serve as anchor businesses to many of our local rural economies,” to describe the role of organic dairies. Organic Agriculture is also a climate smart system of agriculture. Science demonstrates that organic farming reduces greenhouse gas emissions, builds soil health and sequesters carbon, and fosters resilience to droughts, floods, and other extreme weather conditions. The practices pioneered by organic farmers, such as cover cropping, are being adopted more broadly in agriculture. All farmers can benefit from these cutting-edge practices to reduce greenhouse gas emissions and sequester carbon.

Organic regulations require farmers to use soil building practices, such as crop rotations, cover crops, and pastured grazing for livestock, which have been proven to improve soil health and increase carbon sequestration. Organic is the ONLY federally regulated label to require the use of these climate-smart farming practices.

The following chart is the average northeast base pay price, in dollars per hundred pounds, since 2004:

|  |  |
| --- | --- |
| Average Northeast Base Pay Price - $ per hundred pounds | |
| 2004 | $ 22.97 | |
| 2005 | $ 24.73 | |
| 2006 | $ 26.00 | |
| 2007 | $ 25.80 | |
| 2008 | $ 28.38 | |
| 2009 | $ 27.50 | |
| 2010 | $ 28.80 | |
| 2011 | $ 30.00 | |
| 2012 | $ 30.75 | |
| 2013 | $ 33.39 | |
| 2014 | $ 35.39 | |
| 2015 | $ 38.39 | |
| 2016 | $ 35.68 | |
| 2017 | $ 33.27 | |
| 2018 | $ 29.52 | |
| 2019 | $ 29.51 | |
| 2020 | $ 29.51 | |
| 2021 | $ 29.51 | |

Organic Dairy Farmers and their families are in a dire situation and in need of constructive assistance now and continuing aid to maintain their operations in the future. As CROPP has stated in its testimony, they cannot go to the market for an increase in price because they have only a small volume of consumer facing branded product. They are subject to competition from large scale, vertically integrated, low cost operations in the competitive store brand market. Organic dairy has none of the direct risk management tools that conventional dairies have. The process of deciding a pay price is opaque and lacks any process. Eighty nine organic dairies in the northeast lost their market because their buyer Danone wanted to change their logistics to cut costs. CROPP has found a market for only 58 of them in their reserve pool. We can’t afford to lose any more

The following are potential remedies that can be implemented as soon as possible to begin to address the disadvantages facing American Organic Dairy Farm Families.

* **Develop an Organic Dairy Safety Net Program**
* **Address the Lack of Competition in Organic Dairy:** Congress should instruct USDA to work with DOJ to investigate the effect of lack of competition in New England and eastern New York in light of Danone’s decision to exit the region.
* **Expansion and investment in dairy processing**
* **Consistent Regulation Enforcement:** The issues around sustainability for the small to mid-size operations (80-1,000 organic cows) hang on how well the USDA’s NOP enforces the regulations. Inadequate and inconsistently implementation for regulations has allowed the supply side of organic dairy to be exploited by low cost operations that exploit loopholes.
* **Request for more detailed organic milk data to reflect the depth of information provided for non-organic milk production:** We request that the committee instruct USDA to establish mechanisms for publishing data for organic milk so organic farmers can understand their market in ways similar to the conventional market.
* **Financially reward the good work that organic farmers are doing regarding climate change**
* **FSA/Organic Certification Cost Share Program (OCSSP)**

1. **Develop an Organic Dairy Safety Net Program**

**Organic Dairy Safety Net Program: An Organic Milk Income Loss Contract (MILC) Program with a Margin Insurance Option for Larger Operations**

*The Organic MILC, with a production cap of 5 million pounds, will use an average milk income per cwt/input cost margin trigger. Larger operations will have the opportunity, like conventional dairies, to purchase insurance to manage risk.*

The profitability of organic dairy production is based on the market returning a high enough consumer price (premium) to provide enough margin to support a pay price to organic farmers that covers the increased costs of production, plus a return on management and on investment. The early promise of organic dairy was that there would be a stable price that reflected costs of production. A stable pay price took a hit in 2009-2011, stabilized, and then disappeared in 2017. Since 2017, the average pay price has been an average of $5 per cwt under the costs of production. The pay price and the payment on components plus quality and volume have been consistent between the two national brands, and all other buyers have slowly followed their lead. This has seen the disappearance of higher payment from regional buyers and the cost of production payments that helped launch a small regional pool of milk. In the past, milk buyers have used Market Adjustment Premiums (MAP’s) as inputs increased or increased pay price. The only increase in Pay Price since 2017 has been 50 or 75 cents/cwt. Milk buyers have clearly said they are not going to increase their pay price.

What currently exists is an allocation of retail premium revenue that is disproportionately leveraged by retailers and consolidated milk buyers. That leaves the vast majority of organic dairy producers as price takers with no leverage facing a monopsony of buyers, because supply price is based on the low cost of production of mega-organic dairies which with economies of scale, vertical integration and investment in UHT, distorts the true cost of production.

While it was in operation, the MILC program significantly helped a lot of farmers during challenging times. The payment limitation constrained benefits for larger farms, but the majority of organic herds nationally have fewer than 100 cows. Under a MILC the vast majority of all U.S. organic dairies are eligible to receive the full countercyclical payment on all their milk sales.

Establishing a trigger for payments that reflects the margin between selected organic inputs and an average pay price, will manage risk above a catastrophic level. In turn, this will reflect organic dairy farms contribution to the rural community, to fighting environmental degradation, and for maintaining a local supply of high quality, regional supply of organic milk.

1. **Expansion and investment in dairy processing**

Congress should make the investment in scale appropriate dairy processing a priority in the 2023 Farm Bill.

Investment must be made in both existing successful track-record processors who are positioned and can scale production quickly and in new scale appropriate processing facilities to continue to develop system flexibility.

The creation of a new supply-side model for organic dairy is needed that addresses the immediate loss of milk markets for organic dairy producers and provides them with long-term sustainability. It is clear that the major dairy companies in the US are quickly moving away from rural communities in favor of more cost-effective supply chains and huge, vertically integrated operations. It has become apparent that the whole organic milk supply-side model needs to change. The current model for the supply side of organic dairy is obsolete, with many organic dairy farms facing extinction now, and many more likely to follow. A long-term analysis of the future of organic dairy family farms will be regionally based. A new organic dairy supply-side model is needed, and a successful model will feature regionally owned, scale-appropriate facilities to process regional milk that will be sold into the regional market as a source-identified local product that will give an adequate pay price that ensures a living wage to organic family farms in the USA.

1. **Address the Lack of Competition in Organic Dairy:**

Congress should instruct USDA to work with DOJ to investigate the effect of lack of competition in New England and eastern New York in light of Danone’s decision to exit the region. New remedies should be proposed to restore competition in the region. The results of this investigation should inform future updates to federal guidelines on horizontal and vertical merger approvals.

The crisis in New England and eastern New York caused by Danone with their Horizon brand decision to cancel their supply contracts with 89 farm families is a vivid regional example of the impacts of consolidation that plagues the entire organic dairy sector. Previous government decisions have allowed this consolidation to worsen and should be revisited. When Danone purchased White Wave in 2017, the Department of Justice mandated that Stonyfield Organic (owned by Danone with a supply contract with CROPP Cooperative) would have to be sold as a remedy to prevent monopsony in the region. Stonyfield Organic was sold to Lactalis, the second largest dairy company in the world. Now, effectively, there is only one buyer of organic milk in New England and eastern New York: Lactalis. Lactalis purchases 80% of its total milk supply from CROPP and purchases the other 20% either directly from Northeast farms or other sources. CROPP milk from New England and eastern New York is also used in packaged product under the Stonyfield Organic label, licensed to CROPP by Lactalis.

1. **Consistent Regulation Enforcement**

**Increase enforcement to level the playing field with consistent implementation of all regulations**

Finalize the rule to crack down on organic fraud, the ‘Strengthening Organic Enforcement’ Rule.

Fraudulent organic imports and domestic fraud undermines consumer confidence in the organic label and undercuts prices for U.S. organic producers. Congress required USDA to issue a final rule to strengthen organic enforcement by December 19, 2019. The comment period on the Proposed Rule ended on Oct 5, 2020. The rule is still under review by USDA.

This is unacceptable. We are asking that Congress urge USDA to move this rule forward as swiftly as possible.

**Strengthen pasture rule enforcement with particular attention to high risk Concentrated Animal Feeding Operations (CAFO)**

Particular attention needs to be paid to the following:

* 1. Certifier's inspection reports are inconsistent in detailing the growing season applicable to each operation. There is published data that reflects the growing season for each area. The operation must follow the applicable growing season rather than fall back on the minimum of 120 days.
  2. In evaluating percentage of dry matter consumption from pasture, each class of animal is required to be assessed separately.
  3. Attention needs to be paid to the crop rotation within the OSP with pasture as a crop.
  4. There is a lack of certifier/ inspector expertise in evaluating the dairy rations of large-scale dairies who use sophisticated technology and teams of veterinarians/nutritionists to prepare reports that may be impossible for the average dairy inspector to interpret when they analyze dairy rations and tie them to production and pasture consumption. NOP needs to mandate that these dairies are inspected by highly qualified dairy nutritionists experienced in pasture management. Surprise inspections of all pasture usage on large-scale dairies during the growing season needs to be required.
  + NOP needs to continue to level the playing field in providing inspectors who can interpret the unsophisticated but honest record keeping of small-scale dairies that do not have the technology, money or time for reports to satisfy desk audits. An experienced dairy inspector can take a walk in the pastures, noting the locations of water, shade and access pathways that are well worn by animals and view the unique signs of grazing within pastures, to assist in their evaluation of meeting regulations.
  + NOP should continue its Dairy Compliance Program; NOP should provide a detailed update with information that would help identify inconsistent enforcement that may be contributing to economic disadvantages for Northeast organic dairy operations

1. **Request for more detailed organic milk data to reflect the depth of information provided for non-organic milk production**

Pay price for organic dairy farmers is set either by direct marketing of products to the consumer; a personal contract with the buyer (organic brand, dairy processor or, in the case of vertically integrated organic CAFO’s, retailer), or as part of a cooperative agreement as a member of a cooperative. There is a scarcity of organic data available for the farmer to make decisions on the state of the organic market, projections on potential changes in supply and demand and the value of their product. Our request is that mechanisms are established for publishing this data for organic milk so organic farmers can understand their market in ways similar to the conventional market.

The Federal Milk Marketing Order program (FMMO) already receives data that allows them to provide information on the organic dairy sector. Statistics on dairy also are found at the *USDA* National Agricultural Statistics Service (USDA NASS) and the USDA's Economic Research Service (USDA ERS). Every region produces a monthly statistical report that is published up to 2 months in arrears of the usage.

FMMO data is derived from reports submitted by pooled handlers. The majority of organic milk is processed at FMMO pool plants that also process and manufacture conventional milk and are required to report to the FMMO. Only FMMO 1 reports some of this information in its monthly statistical reports, in limited form. The FMMO 1 Monthly Statistical Report breaks out organic Class I fluid volumes for Whole Milk and Reduced Fat Milk (2%), and this limited report has some use. Providing only part of the needed data, however, the information can also be combined to get an inaccurate picture of utilization of organic fluid milk in the Order and marketplace.

USDA Dairy Programs asserts that it only has the statutory authority to collect Class I, fluid milk data in the detail necessary to separate milk produced under organic production but has not explained either why the information is not available for all Orders or why the data made available from FMMO 1 is only provided in such limited form. The following request we believe is within the statutory authority of the FMMO:

1. Utilization of organic Fluid Milk products and cream from Producer Receipts and Other Sources: Class I milk:

* Marketing Area.
* Other Federal Markets.
* Non-Federal Markets.

2. Utilization of Fluid Milk Products and Cream by Pool Plants for Class 1 Milk, for all Orders:

* Organic Whole Milk
* Organic Reduced Fat Milk (2%)
* Organic Low Fat Milk (1%)
* Organic Fat Free Milk (Skim)

3. Organic Mailbox Price by region

4. Export of organic dairy products

The monthly reporting from FMMO 1 shows "Class I from outside the marketing area." Our request is does this total include bulk and packaged milk too?

We also request that Dairy Programs reconsider whether utilization of organic milk for Class II Yogurt utilization may be identified under existing authority, and what would be required to make the information available if this authority exists.

1. **Financially reward the good work that organic farmers are doing regarding climate change**

Organic agriculture should be front and center in policies that address the role of agriculture in combatting climate change. Organic dairy farmers should be at the table for these discussions. Congress should reward the good work that organic farmers are already doing and should assist others interested in transitioning to organic.

We are asking that Congress should include provisions in the 2023 Farm Bill to:

* + - * Support organic farmers and help others to transition to organic.
      * Increase funding for organic research related to climate change.
      * Increase funding for USDA conservation programs to reward regenerative organic farming practices.
      * Modernize USDA risk management programs to reward, not penalize, regenerative organic farming practices.

Include provisions in the FY 2023 Agriculture Appropriations bill to:

• Increase funding for USDA’s National Organic Program with focus on increased enforcement of existing soil health requirements

• Increase organic research funding related to climate change.

1. **FSA/Organic Certification Cost Share Program (OCSSP)**

In the previous Administration, USDA’s Farm Service Agency (FSA) unilaterally cut reimbursements to organic farmers under the Organic Certification Cost Share Program (OCCSP), in conflict with the 2018 Farm Bill directive. As a temporary stopgap, USDA created a parallel Organic and Transitional Education and Certification Program (OTECP), which NODPA has supported.

OTECP is currently slated to provide stopgap funding through FY2022.

For FY 2023, it is critical to fully fund the OCSSP. The OCSSP is especially important for small and mid-size farms and for underserved producers. A recent survey conducted by the Organic Farming Research Foundation <https://ofrf.org/research/nora/> shows that the cost of organic certification was identified as a major challenge - 29% of all organic farmers listed this as a challenge & 61% of Black, Indigenous and other farmers of color identified this as a challenge. Thus far, USDA has not committed to fully restore the program for FY23, so we are asking Congress to fix the problem through the FY 2023 appropriations process.

**Summary**

The future for all small to mid-size organic dairies must include regulations that maintain organic integrity, not undermine it for the benefit of large operations and milk handlers. We must have strong enforcement and certifiers that understand the regulations and a USDA NOP that can ensure consistent enforcement at all levels of production. We must also look at infrastructure that is scale and market appropriate. If we have regulations that are strongly enforced, the processing, packaging and marketing infrastructure will have a secure base to build on. For organic dairy, that will mean having modern processing facilities that are designed to process and package smaller quantities of milk to meet the needs of the value-added products that have a strong market with discriminating consumers. When the next pandemic or weather crises happens, will the food supply chain be more protected or more exposed with less processing capacity and a smaller rural population?

NODPA appreciates the opportunity to provide written testimony for the "A 2022 Review of the Farm Bill: Dairy Provisions." Please reach out to me with any questions or follow-up from Committee members as you take on the massive work of developing the 2023 Farm Bill.

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